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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 ADAU AKUI ATEM MORNYANG,

17 Defendant.
18

Case No. 19-CR-50-CJC

**EX PARTE APPLICATION TO FILE
UNDER SEAL; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF COUNSEL**

19 Defendant Adau Akui Atem Mornyang, by and through her attorney of record
20 Deputy Federal Public Defender Erin Murphy, hereby applies to this Court for an Order
21 that "Defendant's Position Re: Sentencing Factors; Exhibits" lodged herewith, be filed
22 under seal.
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1 This application is based upon the attached Memorandum of Points and
2 Authorities, the attached declaration of Erin Murphy, and all files and records in this
3 case.

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5 Respectfully submitted,
6 HILARY POTASHNER
7 Federal Public Defender

8 DATED: July 1, 2019

By /s/ Erin Murphy

9 ERIN MURPHY
10 Deputy Federal Public Defender
11 Attorney for
12 ADAU AKUI ATEM MORNYANG
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MEMORANDUM OF POINTS AND AUTHORITIES

A court has supervisory powers over its records and files to seal documents under appropriate circumstances. *See United States v. Mann*, 829 F.2d 849, 853 (9th Cir. 1987). Local Rule 79-5.1 provides that a party may request that documents be filed under seal.

Presentence Reports prepared by the Probation Officer are not filed in the Court file, but rather submitted to the Court for the purposes of sentencing and thereafter held by the United States Probation Office. *See Fed. R. Crim. P. 32; see also United States v. Schlette*, 842 F.2d 1574 (9th Cir. 1988) (addressing confidentiality of presentence reports). Thus, because of the personal contents of the reports, they are considered confidential documents. *Shalette*, 842 F.2d at 1579, 1583. As such, courts have established a strong presumption in favor of confidentiality in determining whether to disclose a Presentence Report to third parties. *Id.* at 1579.

The Ninth Circuit Court of Appeals has a standing local rule permitting the filing of all pre-sentence reports and all other confidential sentencing documents under seal. *See Ninth Circuit Rule 30-1.8.*

The underlying document references highly sensitive information relating to Ms. Mornyang's background. The document also includes private and personal information from the Pre-sentence Report

It is submitted that the attached declaration of Erin Murphy is sufficient to justify that Defendant's Position Regarding Sentencing, Exhibits, lodged herewith, be filed under seal.

Respectfully submitted,
HILARY POTASHNER
Federal Public Defender

DATED: July 1, 2019

By /s/ Erin Murphy
ERIN MURPHY
Deputy Federal Public Defender
Attorney for
ADAU AKUI ATEM MORNYANG

DECLARATION OF ERIN MURPHY

I, ERIN MURPHY, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California, appointed to represent Ms. Adau Akui Atem Mornyang in the above-entitled action.

2. In preparing a position on sentencing on Ms. Mornyang's behalf, I included details about Ms. Mornyang and her background that are highly sensitive. I also incorporate such highly sensitive details from the Presentence Report. I am concerned that the publication of these details could unduly invade Ms. Mornyang's privacy. Accordingly, I seek the Court's permission to file the instant sentencing position, exhibits, and declaration under seal.

3. On July 1, 2019, I spoke to Assistant United States Attorney MiRi Song. Ms. Song informed me that the government does not oppose this request.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 1, 2019

By /s/ ERIN MURPHY

ERIN MURPHY

Federal Public Defender